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No. 199

Supreme Court of the United States

October Term, 1959

MARY JO WILLIAMS, Administratrix of the Estate of PERCY L. WILLIAMS and MARY JO WILLIAMS, Transferee of the Assets of PERCY L. WILLIAMS,
Defendants-Appellants,

v.

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF OF PETITIONERS

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The Brief for the United States in opposition to the Petition for a Writ of Certiorari makes certain erroneous statements. In the fifth line of Page 3, it is set forth, "This power of attorney authorized and requested that all communications relative to Williams' tax matters *be mailed to Mr. Sol Goodman* * * *". At the top of Page 4, "The statutory notice of deficiency was sent *by registered mail to Mr. Percy L. Williams*, c/o Sol Goodman * * *".

(1) **It is, thus, evident that the power of attorney merely designated a person as attorney and did not designate a place as an address.**

(2). It is, thus, obvious that the statutory notice of deficiency was not sent in accordance with the instructions in the power of attorney.

On Page 4, the Brief sets forth that prior to the issuance of the statutory notice of deficiency, there had never been filed a notice of fiduciary relationship on behalf of Mary Jo Williams.

(3) If the statutory notice of deficiency was set up on December 2, 1955, and the fiduciary was appointed on December 21, 1955, how could a notice of fiduciary relationship be filed prior to the appointment of the fiduciary?

On Page 5, it is pointed out that the Director of Internal Revenue filed his claim with the Administratrix on August 17, 1956. This is eight (8) months after the Administratrix was appointed, while the Ohio Statute requires the filing within four (4) months.

On September 14, 1956, the claim was rejected and disallowed. Ohio Statutes require that any relief against late filing must be by action directed to the Ohio Probate Court within nine (9) months. The rejection of the claim on September 14, 1956 was within that nine (9) month period. No action was filed by the United States of America in any Court within the nine (9) month period. The complaint filed in this action on November 9, 1956 was ten (10) months and two (2) weeks after the appointment of the Administratrix and was, therefore not timely.

On Page 7, it is set forth

> "However, whether the statutory notice of deficiency issued by the Commissioner and sent by registered mail on December 2, 1955, *was sent to the last known address of the deceased* within the meaning of Section 272 (a) and (k) of the Internal Revenue Code of

1939, Appendix, infra, pp. 14-15, *presents a factual question of no general importance.* Moreover, this issue has been decided adversely to the taxpayer by both courts below, on evidence *which fully supports the result.*"

It is difficult to comprehend how such a statement can be made. The Record established that the Director of Internal Revenue had Williams' home address and business address. The clear and concise language in the power of attorney only authorized sending notices to his attorney but did not specify his attorneys' office *as his last known address.* The District Court and the Court of Appeals did not find any factual differences between the parties. The facts are agreed upon. It is only their conclusion that *the designation of an attorney constitutes the designation of an address* that we differ with.

To see that there is no factual dispute, we quote from the Government's Brief at Page 7:

> By the power of attorney executed on July 27, 1954 (Ex. 1-E, Supp. R. 12b-13b), Williams not only appointed Sol Goodman to act for him in connection with any matters involving federal taxes, particularly for the years 1944, 1945, 1946, and 1948, *but he also requested that all communications be sent to Sol Goodman,* 1016 Union Trust Building, Cincinnati, Ohio. In *accordance* with that request *the Commissioner's notice of deficiency for the taxes involved was sent to Williams in care of Sol Goodman at 1016 Union Trust Building, Cincinnati, Ohio* (Ex. 1-D, Supp. R. 1b-2b)."

In the second sentence above, the conclusion is made that the notice was sent "in accordance with that request". To that extent, the lower Courts agreed with the Government. In that respect, we contend that the Government

and the lower Courts are wrong. The proper language should be "contrary to such request".

In view of the Government's Brief and our analysis thereof, as set forth herein, how can it be said that the decision by the Court of Appeals, Sixth Circuit, in the present case, *is not in conflict with D'Andrea v. Commissioner*, 263 F. 2d 904 (C.A.D.C.)?

We respectfully submit that the decisions by the lower Courts herein constitute a grave injustice to the taxpayer, deprive the taxpayer of any opportunity to a judicial hearing; deprive the taxpayer of the entire estate without an opportunity to be heard; is contrary to the great weight of authority, as indicated by the decisions of this Court and the decisions of Courts of Appeal; is contrary to the laws regulating estates, as set up under the laws of Ohio and the laws of the United States; and for those reasons, the Petition for a Writ of Certiorari should be granted.

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Sept., 1959